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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,487

12/12/2005

Wolfgang Orgeldinger

SCHO0590

3136

22862 7590 07/02/2010

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

07/02/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eptomatters@glenn-law.com

Office Action Summary	Application No. 10/560,487	Applicant(s) ORGELDINGER, WOLFGANG	
	Examiner /Stephen J. Castellano/	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 18-23 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 30, 2009.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lattice structured lateral walls of the crate as claimed in claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heymann et al. (4527707) (Heymann) in view of Sluiter (2002/0033392).

Heymann discloses a transport container system comprising a crate and a unitary top, the crate has fasteners 20 for attaching the top in the embodiment shown in Fig. 1-3. Heymann discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

The lateral walls of Heymann's crate fail to define a lattice insofar as disclosed by applicant's drawings that only one recess need to be provided for the fastening means to engage the lateral walls of the crate. Heymann teaches a wire rack 58 in the embodiment of Fig. 9. The wire rack 58 is a lattice structure that has a network of openings with an end wall, four lateral walls and an open end. Fasteners (C-shaped clips 56) are shown that releasably attach to the lateral walls of the wire rack and attach the lateral walls to a bottom member 44. It would have been obvious to replace the crate and fastener of the Fig. 1-3 embodiment with the wire rack 58 and fastener 56 of the Fig. 9 embodiment to provide a crate having lattice structure that is lighter in weight, stronger and allows for ventilation of the interior of the crate.

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Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392).

NL ('986) discloses a transport container system comprising a crate and a unitary top that has fold lines at its corners for collapsing into a compact configuration, the top has fasteners (tongues 5) for attaching to the crate. NL ('986) discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

The lateral walls of the NL ('986) crate define a lattice insofar as disclosed by applicant's drawings that only one recess need to be provided for the fastening means to engage the lateral walls of the crate. NL ('986) discloses recesses 7 on the lateral walls.

Re claim 17, the top has corner fold lines. The bottom face opening of the top conforms in shape (rectangular) to the crate opening formed by the lateral walls. The stacking profile doesn't specify any definitive shape. Therefore, a planar profile wherein the entire upper edge is within the same horizontal plane reads on the profile. NL ('986) discloses a planar profile wherein the entire upper edge is within the same horizontal plane.

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.

NL ('986) and Sluiter are applied as stated in the above rejection. The teachings of Heymann are added if it should be deemed that NL ('986) doesn't adequately disclose the lattice structure. Fig. 9 of Heymann discloses a wire rack 58 and a fastener 56. The bottom crate and

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fastener of NL ('986) are replaced with the wire rack 58 and fastener 56 of Heymann to provide a crate having lattice structure that is lighter in weight, stronger and allows for ventilation of the interior of the crate.

Claims 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).

Kuhns discloses a transport container system comprising a crate (wagon) and a unitary top (walls 24) with corner stiffeners (sheet metal angle iron 46), the crate has fasteners (bolts 32) for attaching the top. The lateral walls of the crate (wagon) define a lattice structure (ladder) at the front of the wagon as shown in Fig. 1. The fasteners (bolts 32) are attached to the top (see attachment of flange 28 to wall 24, both 24 and 28 are considered the lateral wall of the top) and are releasably engageable with the lateral walls (lateral walls includes walls 12, inwardly extending flanges 30 and ladder) of the crate (see Fig. 3). Kuhns discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) as applied to claim 12 above, and further in view of Sterett (5361906).

The combination discloses the invention except for the irregular surfaces. Sterett teaches an irregular lower edge below the crate bottom and irregular edges on the lateral walls of the top

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capable of being received in mating engagement with the irregular lower edges of the crate. It would have been obvious to modify the edges in order to provide mating engagement and stable stacking of a plurality of systems each having a crate and a top.

Applicant's arguments filed April 21, 2010 have been fully considered but they are not persuasive. The teaching from Fig. 9 of Heymann has been applied to teach a lattice structure within wire rack 58.

The Dutch reference [NL ('986)] is still relied upon for rejection. The Dutch reference is believed to show the lattice structure insofar as disclosed in the drawings. It appears that only one recess is needed to engage each fastener 32 as disclosed in Fig. 2, 3a and 3b. There are no further details specified for the lattice structure. The recesses 7 shown in Fig. 3 of the Dutch reference are deemed a lattice structure.

In addition, a rejection has been made which adds the teachings from Fig. 9 of Heymann to the Dutch reference (primary reference).

The ladder shown in Fig. 1 of Kuhns defines a lattice structure on the lateral walls of a crate (bottom wagon portion).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
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sjc